

Department of State

§ 16.12

expenses, shall be paid out of funds appropriated to the Department for obligation and expenditure by the Board. At the request of the Board, officers and employees on the rolls of the Foreign Affairs agencies may be assigned as staff employees to the Grievance Board. Within the limit of appropriated funds, the Board may appoint and fix the compensation of such other employees as the Board considers necessary to carry out its functions. The officers and employees so appointed or assigned shall be responsible solely to the Grievance Board and the Board shall prepare the performance evaluation reports for such officers and employees. The records of the Grievance Board shall be maintained by the Board and shall be separate from all other records of the Foreign Affairs agencies.

§ 16.11 Grievance Board consideration of grievances.

(a) *Filing of grievance.* A grievant whose grievance is not resolved satisfactorily under agency procedures (§16.7) shall be entitled to file a grievance with the Grievance Board no later than 60 days after receiving the agency decision. In the event that an agency has not provided its decision within 90 days of presentation, the grievant shall be entitled to file a grievance with the Grievance Board no later than 150 days after the date of presentation to the agency. The Board may extend or waive, for good cause, the time limits stated in this section.

(b) *Exhaustion of agency procedures.* In the event that the Grievance Board finds that a grievance has not been presented for agency consideration or that a grievance has been expanded or modified to include materially different elements, the Board shall return the grievance to the official responsible for final agency review unless the agency waives any objection to Board consideration of the grievance without such review.

(c) *Prescription of interim relief.* If the Grievance Board determines that the agency is considering any action of the character of separation or termination of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of

salary, expenses, or allowances, which is related to a grievance pending before the Board, and that such action should be suspended, the agency shall suspend such action until the Board has ruled upon the grievance. *Notwithstanding* such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude an officer or employee from official premises or from the performance of specified duties when such exclusion is determined in writing to be essential to the functioning of the post or office to which the officer or employee is assigned.

(d) *Inquiry into grievances.* The Board shall conduct a hearing at the request of a grievant in any case which involves disciplinary action, or a grievant's retirement from the Service under sections 633 and 634 of the Act, or which in the judgment of the Board can best be resolved by a hearing or by presentation of oral argument. In those grievances in which the Board holds no hearing, the Board shall offer to each party the opportunity to review and to supplement, by written submission, the record of proceedings prior to its decision.

§ 16.12 Hearing.

(a) *Appearances and representation.* The grievant, a reasonable number of representatives of the grievant's own choosing, and a reasonable number of agency representatives, are entitled to be present at the hearing. The Grievance Board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others.

(b) *Conduct of hearing.* (1) Testimony at a hearing shall be given by oath or affirmation which any Board member or person designated by the Board shall have authority to administer.

(2) Each party shall be entitled to examine and cross-examine witnesses at the hearing or by deposition, and to serve interrogatories answered by the other party unless the Board finds such interrogatory irrelevant or immaterial. Upon request of the Board, or upon a request of the grievant deemed relevant and material by the Board,